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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 512

PIONEER PLASTICS CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. A1-A11) has not yet been reported. The Board's decision and order (B.A. 158-187)[1] are reported at 159 NLRB No. 110.

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[1] "B.A." references are to the Board's Record Appendix filed in the court of appeals. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

JURISDICTION

The judgment of the court of appeals was entered on June 23, 1967 (Pet. A1). The petition for a writ of certiorari was filed on August 18, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there is substantial evidence to support the Board's findings that the employer discharged two employees for antiunion reasons, and refused to reinstate two employees who concertedly ceased work to protest the discriminatory discharge of their fellow employees.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*), are as follows:

> Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8.(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

STATEMENT

A. The Board's Findings of Fact

Petitioner operates a plant in Sanford, Maine, where it is engaged in the manufacture, sale, and distribution of plastic laminates and related products (B.A. 159; 95-96). In the spring of 1965, the Company opened a new plant in Auburn, Maine. On August 4, 1965,[2] the Leather Workers International Union, AFL-CIO ("Leather Workers"), after speaking with Company officials about its intention, began an organizational campaign among petitioner's production employees at the Auburn plant (B.A. 159; 16, 96-98, 106-107). In late August, the Teamsters,[3] after an initial contact with petitioner's Auburn traffic manager, Hubert Libby, began its organiza-

[2] Unless indicated otherwise all dates refer to the year 1965.

[3] Truckdrivers, Warehousemen and Helpers Union, Local No. 340, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

tional drive among the Company's Auburn trucking division employees (B.A. 175; 114, 122, 130-131).

From the outset, top echelon Company officials made it clear to the union organizers that petitioner wanted no unions at the Auburn plant for at least two years (B.A. 159-160, 175; 16, 96-97, 100-101, 106-107, 130-131). When the unions persisted in their organizational efforts, the Company reacted by embarking upon a course of conduct which included surveillance of the Leather Workers' activities, coercive interrogations about union activities, threats of reprisals if the employees continued their union activities, and promises of economic benefits if employees would forego the Teamsters.[4] In addition, petitioner discharged two employees who were active in Union affairs, Elsie Boston and Rebecca Gould, and refused to reinstate two other employees, Karen Blaisdell and Barbara LeBel, who had ceased work in protest over the discharges. The facts relating to these incidents are as follows:

Boston and Gould each started working for petitioner in the spring of 1965, at the Auburn plant. Hired as "builders" in the "buildup room," they were both promoted rapidly—Gould to the position of "ticket girl," and Boston first to "head ticket girl" and then to "lead girl" (B.A. 21-22, 41, 53). Foremen Alexander and Roy, and Plant Superintendent La Scola often went out of their way to praise the work

[4] The court below affirmed the Board's finding that this activity constituted a violation of Section 8(a)(1) of the Act (Pet. App. A-1 through A-5; B.A. 159-161, 175-179). The Company does not contest those findings here.

of both Boston and Gould, stating that "both [were] doing very good on their jobs" and that Boston "could do the work [of lead girl] better than anyone else" (B.A. 165, 171-172; 22, 32, 54-55, 88-89, 132, 137, 139).

At the request of Boston and Gould, petitioner brought in some employees from the Sanford plant to instruct the "builders" in Auburn (B.A. 164-165; 55, 152-153). About August 6, Boston, Gould, LeBel, and other employees asked the Sanford girls about the pay scale at Sanford. The Sanford girls refused to answer their questions (B.A. 165, 25). Boston and Gould then asked Foreman Alexander for the name of the union at the Sanford plant; he referred them to La Scola, who told them that "we don't want a union up here." La Scola asked Gould if she thought that the employees would select a union, and she replied in the affirmative (B.A. 165; 26, 55, 139-140). Supervisor La Chance also refused to discuss the Sanford union with Boston (B.A. 165; 26-27).

Boston and Gould then began talking to their fellow employees about the need for a pay raise and a union. They stressed how a union would help the employees and why representation was needed. They did this on their lunch hours, their breaks, and in the buildup room, sometimes in the presence of the foremen, Alexander and Roy (B.A. 165-166; 27-29, 56-58, 68-69, 71, 75, 85-88). On August 9, Roy asked Gould if she thought the Leather Workers would get into the plant, and then told her that the union was "no good" (B.A. 166; 56-57).

On Friday, August 13, at about 4 p.m., Boston and Gould were summoned to Personnel Manager Trembly's office and told that he was thinking of discharging them because their work was unsatisfactory and they were "instigators." He suspended them both until 3 p.m. Monday, August 16, when he promised to give his decision. When Boston asked what they were "instigating," Trembly replied, "you know what" (B.A. 166; 7-9, 30-32, 58-59). During the morning of August 16, Karen Blaisdell and Barbara LeBel, two valued "builders" (B.A. 81), organized a protest group among the buildup room employees to speak with Trembly "about Elsie and Becky's return" (B.A. 166; 35-36, 59, 72-73, 89). A meeting was arranged in the buildup room, at which time Trembly asked Blaisdell and LeBel what they wanted to see him about. When told that they wished to speak on behalf of Boston and Gould, he asked them to bring the other girls over. Trembly told the assembled group that he appreciated their support for the suspended girls, but that it would not help because he was going to decide the matter as he saw fit (B.A. 167; 73-75, 89-90). Later that day, Trembly reinstated Boston and Gould, telling them that he "had learned a lot today; that he was going to keep his eyes open, and that [Boston and Gould] should keep [their] words to [them]selves" (B.A. 35).

The next morning, Roy, their immediate superior, took both girls aside and told them that they had done "a good job until now," but that they had better watch themselves closely because "the company was going to watch" for "the least little thing" they did

wrong (B.A. 167; 37, 60). They returned to work and Boston resumed talking to her fellow employees about the need for a union (B.A. 37). A few days later, Boston was informed of a union meeting scheduled for August 23, and told Gould, Blaisdell, and LeBel about it. Boston and Gould each asked for and received permission to leave early that day, giving as reasons medical appointments (B.A. 167-168; 38-40, 61). Boston and Gould both signed union cards at the meeting, as did Blaisdell and LeBel, who arrived later. It was agreed that another meeting would be held at Boston's home (B.A. 160, 167; 40-41, 51-52, 62, 75-76, 90, 101-102, 107, 157).

On the morning of August 24, the excuses offered by Boston and Gould for leaving early the day before were checked and found to be false (B.A. 168; 41, 63). Although Boston and Gould had been granted time off in the past, this was the first time that petitioner checked their excuses (B.A. 137-138; Tr. 50-51). Throughout the day, Boston and Gould talked to other employees in the buildup room about the union meeting the prior evening, and asked them to attend the next one (B.A. 168; 42-43, 62-63).

At 11 a.m. on August 25, Trembly called Boston to his office and discharged her. He told her that she "did not know how to keep [her] mouth shut" and that her work was unsatisfactory (B.A. 168-169; 43-44). Immediately thereafter, Gould too was called to Trembly's office and discharged. Trembly said that her work was unsatisfactory and that she lied as to her reason for leaving early on August 23 (B.A. 169; 64-65).

After her discharge, Boston returned to the buildup room where she told Blaisdell and LeBel what had occurred. Blaisdell and LeBel immediately took off their smocks and put them on Foreman Roy's desk (B.A. 169; 45, 76, 90-91). They then went into the next room with Boston, saying on their way out that they were leaving because "Boston had been fired for speaking about union [sic] in the plant" (B.A. 169; 76-77, 91). The three of them, joined by Gould upon her return from the office, then talked with some of the male employees about a possible walkout in protest over the discharges. A few minutes later, Supervisor Alexander told all four of them to get their checks and leave the premises (B.A. 169; 45-46, 65-66, 77-78, 91). The four girls then went to Trembly's office together, picked up their checks, and left the plant as a group (B.A. 172-173; 78-79, 92).

On August 26, Blaisdell and LeBel tried without success to see Trembly (B.A. 173; 79, 92-93). That afternoon, however, Trembly did see Blaisdell distributing union literature outside the plant gate (B.A. 173; 13-16). The next day Blaisdell and LeBel told Trembly that they had walked out with Boston and Gould because they were "mad," and asked to be reinstated to their jobs. Trembly replied that their work records were "very good," but that their jobs had been filled; he said that he would look into the matter. He then showed them a union leaflet which he said he had received, and remarked that he wanted "a couple of years" without a union in the plant (B.A. 173; 79-81, 93-94).

On August 30, Boston and Gould returned to the plant and asked Trembly to rehire them. He said that he would talk it over with their supervisors and notify them. He added that he did not want a union in the Auburn plant for about two years (B.A. 169; 15-16, 48). A few days later, Trembly told the girls that he had decided not to rehire Boston and Gould, and that he would not reinstate Blaisdell and LeBel (B.A. 169-170; 48-49, 94).

B. The Decisions of the Board and the Court of Appeals

Upon the foregoing facts, and in the light of petitioner's extensive program of restraint and coercion in violation of Section 8(a)(1) of the Act (see n. 4, *supra*), the Board found that petitioner discharged employees Boston and Gould because of their union activity, and not because they had lied, and that by doing so it violated Section 8(a)(3) and (1) of the Act (B.A. 163-172). The Board also found that employees Blaisdell and LeBel concertedly ceased work in order to protest the illegal discharges of their fellow employees, that petitioner knew this, and that, by failing to reinstate them to their former positions upon their application, petitioner further violated Section 8(a)(3) and (1) of the Act (B.A. 169, 174). The Board ordered petitioner to cease and desist from the unfair labor practices found, and to reinstate the employees discriminated against with back pay (B.A. 181-183, 186-187).

The court of appeals sustained the Board's findings and enforced its order in full (Pet. App. A-1 to

A-11). In doing so, the court refused to upset the evaluation of the credibility of the various witnesses made initially by the Trial Examiner and adopted by the Board, stating "'that questions of credibility are for the Board, subject to judicial review only when the Board oversteps the bounds of reason' * * *. There is no basis for finding that the Board overstepped the bounds of reason in making these findings" (Pet. App. A-8).

ARGUMENT

The basic question raised in the petition is whether the court below erred in affirming the Board's finding that petitioner discharged employees Boston and Gould because of their union activity, rather than for just cause. This presents only an evidentiary issue which does not warrant review by this Court. *National Labor Relations Board* v. *Pittsburgh S.S. Co.*, 340 U.S. 498, 502-503; *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 490-491. In any event, the facts summarized in the Statement, *supra*, pp. 3-9, and the careful analysis of the record reflected in the opinion of the court (Pet. App. A-1 through A-11), show that the Board's findings were fully justified.[5]

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[5] The decision in *National Labor Relations Board* v. *Ogle Protection Service*, 375 F. 2d 497 (C.A. 6), pending on petition for certiorari, No. 321, this Term, which petitioner asserts conflicts with the decision below (Pet. 6), turns upon its particular facts. Moreover, insofar as that decision reflects the view that "the uncorroborated testimony of the party who stands to benefit from an award of reinstatement

Nor is there substance to petitioner's further contention (Pet. 6-7) that the court below found the walkout of employees Blaisdell and LeBel to constitute activity protected by Section 7 of the Act without a showing that the Company was aware of the purpose of the walkout. Consistent with the rationale of *National Labor Relations Board* v. *Washington Aluminum Co.*, 370 U.S. 9, and *National Labor Relations Board* v. *Jamestown Veneer and Plywood Corp.*, 194 F. 2d 192 (C.A. 2), the court below properly found that, "the circumstances [surrounding the walkout] were such that it is only reasonable to infer that respondent knew * * * that their walkout was in protest of the discharge of their two fellow employees" (Pet. App. A-11).

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and back pay * * * may not constitute substantial evidence" (Pet. 6), it is inconsistent with the rationale of this Court's holding in *National Labor Relations Board* v. *Walton Mfg. Co.*, 369 U.S. 404, 405-408.

CONCLUSION

The petition for a writ of certiorari should be denied.

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